

Serial No.: 10/065,286
Attorney Docket No.: F-380

Patent

REMARKS

1. Status of Claims

Claims 1-7 were pending in the Application. Applicant has added claims 8-16. Applicant respectfully request entry of the above amendments and consideration of the enclosed remarks. Applicant respectfully submits that no new matter is added. Accordingly, claims 1-16 will remain pending in the application.

2. Claim Rejections

In section 4 of the Office Action, the Examiner rejected claims 1, 2, 6 and 7 under 35 U.S.C. 103(a) as allegedly rendered obvious by seven references including U.S. Patent No. 6,254,846 to Robinson, Jr. ("Robinson '846"), United States Patent Application Publication 2004/0046009 to Weisenberg, et al. (Weisenberg '009"), United States Patent Application Publication 2003/000140015 to Applebaum (Applebaum '015"), United States Patent Application Publication 2003/0085266 to Simon (Simon '266"), U.S. Patent No. 6,295,506 to Heinonen, et al. (Heinonen '506"), U.S. Patent Application Publication 2002/0072733 to Flaherty ("Flaherty '733") and U.S. Patent Application Publication 2002/0083022 to Algazi ("Algazi '022").

Applicant respectfully traverses the rejection.

Initially, Applicant appreciates the Examiner providing a copy of the related provisional patent application in the Simon '266 reference. Applicant notes that the reference is not entitled to its earlier filing date for all material. Accordingly, Appellant respectfully submits that the reference is not available as prior art for all material.

Applicant also respectfully submits that the references are not properly combined. For example, the Flaherty '733 reference does not appreciate the problem of a test strip, but describes a reservoir used in a drug delivery device. As the Federal Circuit has held, "[I]t is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art ..." See *In re Fitch*, 972 F.2d 1260, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992)(quoting *In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1998).

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Furthermore, the Flaherty '733 reference describes devices, systems and methods for patient infusion with a drug delivery system. Clearly, Flaherty '733 is not even remotely related to test strip devices and is not at all pertinent to the claimed invention. Accordingly, the references are not properly combined. The rejections should be withdrawn because the references are not in an art analogous to that of the invention as presently claimed. See *Wang Lab., Inc. v. Toshiba Corp.*, 993 F. 2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993).

The Heinonen '506 reference describes blood glucose monitoring systems and does not even appreciate the problem of hazard detection. The Algazzi '022 reference does not even appreciate the problem of test strips. Clearly the cited references are in non-analogous areas.

Furthermore, the cited references do not establish a prima facie obviousness rejection. For example, the electronic fingerprint of Robinson '846 provides location information to ensure positioning of the substrate, not an identifier as claimed in claim 1. See Robinson '846, col. 6, lines 6-25. The test strip art cited does not teach or suggest time data as claimed and the Algazzi '022 reference does mention time data in bar codes, but does not even contemplate test strips. Claims 2, 6 and 7 depend directly or indirectly from claim 1 and are patentable over the cited references for at least the reasons stated above.

Accordingly, Applicant respectfully requests that the Examiner withdraw the rejections.

In section 5 of the Office Action, the Examiner rejected claims 3-5 under 35 U.S.C. 103(a) as allegedly rendered obvious by the seven references listed above and in further view of an eighth reference, namely U.S. Patent No. 4,840,919 to Attar ("Attar '919").

Applicant respectfully traverses the rejection.

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Claims 3-5 depend directly or indirectly from claim 1 and are patentable over the cited references for at least the reasons stated above. Furthermore, Attar '919 does not appreciate the problem of placement of a holder in relation to an envelope and holes as claimed.

Accordingly, Applicant respectfully requests that the Examiner withdraw the rejections.

Applicant respectfully submits that the new claims 8-16 are patentable over the cited references for at least the reasons given above.

Accordingly, Applicant submits that the invention as presently claimed in claims 1-16 is in condition for allowance.

3. Conclusion Of Remarks

For at least the reasons stated above, it is respectfully submitted that the claims of this application are in condition for allowance and early and favorable action thereon is requested.

If the Examiner believes that additional issues may be resolved by a telephone interview, the Examiner is respectfully urged to telephone the undersigned attorney for Applicant at (203) 924-3180.

4. Authorization

No fee is believed due with this Amendment. However, the Commissioner is hereby authorized to charge any additional fees which may be required for the response or credit any overpayment to the Pitney Bowes, Inc. Deposit Account Number 16-1885, Order No. F-380.

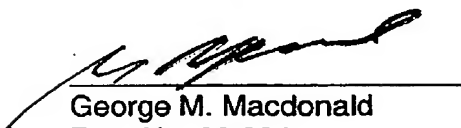
In the event that an extension of time or additional extension of time is required to make this response timely filed, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely. The

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Commissioner is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the Pitney Bowes, Inc. Deposit Account Number 16-1885, Order No. F-380.

Respectfully submitted,



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